THE HONOURABLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.17736 of 1997

DATED: 14.03.2007

Between:

K.Madduleti Reddy .. Petitioner

And

The Chairman, Board of Committee,
A.P. Markfed at Hyderabad and another. .. Respondents.

THE HONOURABLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.17736 of 1997

ORDER:

This Writ Petition is filed questioning the order in Rc.No.MEII/ATPR/DC/95, dated 03.02.1997, passed by the 1st respondent, whereby he confirmed the proceedings in RC.No.MEII/ATPR/DC/95, dated 31.01.1996 of the 2nd respondent, who imposed on the petitioner the punishment of stoppage of three annual grade increments with cumulative effect and the period of suspension of the petitioner being treated as on leave.

2. The petitioner was working as a Junior Field Supervisor in the respondents' Organisation at the relevant time, and while so, on certain allegations against him, the 2nd respondent ordered for a departmental enquiry on the petitioner, wherein a single charge was framed. The charge reads as hereunder:-

> "The charged officer in collusion with certain societies in Ananthapur District sold the Fertilisers to private traders with a motive of pecuniary consideration."

3. An Enquiry Officer was appointed and after completion of enquiry, he submitted his report. The 2nd respondent issued a show cause notice on 20.07.1995 and after considering the explanation submitted by the petitioner, dated 31.07.1995, the 2nd respondent imposed the punishment as aforementioned. The appeal, dated

29.03.1996, preferred by the petitioner having been rejected by the 1st respondent in his order dated 03.02.1997, the present Writ Petition is filed.

4. Heard Sri Ganga Rao, learned counsel representing Sri E.Maruthi Raja, learned counsel for the Petitioner and Sri Praveen Kumar, learned counsel representing Sri M. Papa Reddy, learned counsel for the Respondents.

5. Sri Ganga Rao, learned counsel for the petitioner submitted that the Enquiry Officer did not give the petitioner an opportunity of examining the witnesses of his choice and that the 2nd respondent, who is the disciplinary authority, failed to supply copy of the enquiry report to the petitioner, therefore, he submits that the enquiry is vitiated for non-observance of principles of natural justice.

6. Per Contra, Sri Praveen Kumar, learned counsel for the respondents submitted that the Enquiry Officer gave every reasonable opportunity to the petitioner to defend himself, and that there is nothing to show that the petitioner made any request to submit a copy of the enquiry report.

7. As regards the first contention of the learned counsel for the petitioner, he did not file a copy of the explanation submitted to the show cause notice issued and as well as the grounds of appeal. In the absence of these two documents, which are material, in order to find out whether the petitioner has made a grievance of it either before the disciplinary authority or before the appellate authority, this contention cannot be countenanced. The petitioner failed to submit any material to show that he had in fact made a request to the Enquiry Officer to

permit him to examine the witnesses. He had even failed to mention in the affidavit filed in support of the Writ Petition the persons whom he sought to examine as witnesses. In the absence of any material and the pleadings being vague, the petitioner's contention that the Enquiry Officer has denied him an opportunity of adducing evidence cannot be accepted.

8. With respect to the contention relating to non supply of enquiry report, it is no doubt true that this case arose after the judgment of Supreme Court in **MANAGING DIRECTOR, ECIL v. B. KARUNAKAR**[1] The respondents have not filed any counter affidavit to controvert the contention of the petitioner in this regard. However, as held by the Apex Court in ECIL's case, that in every case of non supply of enquiry report, the disciplinary proceedings cannot be invalidated, unless the petitioner pleads and establishes prejudice suffered by him on account of non supply of the enquiry report. No such prejudice is pleaded in the affidavit, much less proved. Therefore, it cannot be said that the Enquiry Officer or Disciplinary authority have committed any procedural illegality or impropriety in conducting enquiry and passing orders.

9. The learned counsel for the petitioner sought to raise a feeble contention that the 2nd respondent failed to give proper reasons to inflict punishment.

10. A perusal of the order shows that cogent and elaborate reasons are given by the 2nd respondent in holding that the petitioner is guilty of misconduct, for which he is charged. It is needless to say that in a judicial review of a disciplinary proceeding, the Court is concerned

only with the decision making process and not the merits of the decision.

11. It is well settled that even on a preponderance of probabilities, a person can be held guilty of misconduct unlike in a criminal case where proof beyond reasonable doubt is the requirement. A perusal of the order of the 2nd respondent and also the order passed by the 1st respondent confirming the order of the 2nd respondent does not indicate that they suffer from any material illegality warranting interference of this Court under Article 226 of the Constitution of India.

The Writ Petition is accordingly dismissed. No costs.

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(C.V.NAGARJUNA REDDY,J)

14.03.2007
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[1] AIR 1994 SC 1074